

## The Packers and Stockyards Act

The Packers and Stockyards Program (P&SP) of the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is charged with the responsibility of administering the Packers and Stockyards Act (P&S Act). The work of P&SP can be described as being economic regulation, as contrasted to health, safety, or service-oriented functions which are carried out by other USDA agencies.

In the words of the Congress, the purpose of the P&S Act is "to assure fair competition and fair trade practices, to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory and monopolistic practices..."

### The Law

- Prompted by Federal Trade Commission investigation into the amount of control exercised by the Nation's five largest meat packing and livestock and meat marketing firms, the P&S Act was enacted August 15, 1921.
- Enacted to assure effective competition and integrity in the marketing of livestock, meat, and poultry.
- Updated several times to keep pace with a changing and dynamic industry.
- Provides payment protection by requiring prompt payment, bonding, packer and poultry trusts, and market agency custodial accounts.
- Covers unlawful acts - unfair, deceptive, discriminatory, or monopolistic practices in the marketing of livestock, meat, and poultry.
- Assigned enforcement to the Secretary of Agriculture and delegated to the Administrator of Grain Inspection, Packers and Stockyards Administration.

### P&SP Personnel and Organization

Employees include auditors, marketing specialists, economists, legal specialists, legal instruments examiners, supervisors, managers, and administrative staff. The headquarters office is located in Washington, D.C., and regional offices are located in: Atlanta, Georgia (Eastern Regional Office – National Office for Poultry); Des Moines, Iowa (Midwestern Regional Office – National Office for Hogs); and Aurora, Colorado (Western Regional Office – National Office for Cattle and Sheep).

### Who is Subject to the Packers and Stockyard Act and Who Benefits?

- Those engaged in the business of marketing livestock, meat, and poultry in commerce are subject to the P&S Act. Stockyards, commission firms, livestock auctions, order buyers, dealers, meat packers, meat brokers, meat wholesalers and distributors, swine contractors, and live poultry dealers are included.
- Livestock producers, poultry growers, consumers, and all firms or individuals engaged in the business of marketing, processing, and distributing livestock, meat, and poultry benefit from the P&S Act.

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### Who is Not Subject to the Packers and Stockyards Act?

- Farmers and ranchers are not subject to the P&S Act when buying livestock for their own stocking or feeding purposes, or when marketing their own livestock.

### Major Enforcement Areas

**1. Payment Protection.** P&SP maintains standards of financial stability for those engaged in the marketing of livestock, meat, and poultry. Specific requirements include the following:

**Bonds** – Commission firms, auction markets, dealers, and order buyers must maintain a bond as a measure of protection for livestock sellers. The size of the bond is based on the volume of business, generally an average 2 days' business with a minimum of \$10,000 bond. Packers whose annual livestock purchases exceed \$500,000 are also required to be bonded.

**Prompt Payment** – Commission firms, auction markets, dealers, order buyers, and packers are required to pay promptly for livestock, usually by the close of business on the day after transfer of possession.

- Payment for livestock sold on a grade-and-yield basis is due at the end of the next business day after the final purchase price is determined. Any credit agreement must be in writing, with prior approval from the seller.
- Live poultry dealers must pay before the close of the next business day for live poultry obtained in a cash sale.
- Live poultry obtained under a poultry growing arrangement must be paid for by the close of the 15th day following the week in which the poultry is slaughtered.
- Payment for meat and meat food products must be made according to contract terms.

**Custodial (Trust) Accounts** – Commission firms and auction markets must maintain a separate bank account for custodial funds. This is a special trust account designed to ensure payment to consignors.

**Packer and Poultry Trusts** – If a meat packer fails to pay for livestock or a live poultry dealer for live poultry, the receivables, inventories, and proceeds derived from such purchases in cash sales or by poultry growing arrangement become trust assets by law. These assets are to be held by the meat packer or live poultry dealer for the benefit of all unpaid cash sellers and/or poultry growers. Cash sellers and poultry growers are legally in a priority payment position in bankruptcy or in claims against trust assets in the event of a business failure.

**Temporary Restraining Orders** – A temporary restraining order against those whose actions are likely to result in harm to livestock sellers, live poultry sellers, or poultry growers may be obtained through a U.S. district court.

**Solvency** – Commission firms, auction markets, dealers, and order buyers must maintain a solvent financial condition to remain in business. Insolvent packers may be required to pay for livestock under specified conditions.

**2. Antitrust.** P&SP continuously investigates and analyzes the structure and performance of the livestock, meat, and poultry industries to ensure fair and open competitive conditions. Specifically, it has programs to detect and prevent:

- Monopolies.

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- Apportioning of trade territories or supplies, and the manipulation or control of prices.
- Predatory pricing, boycotting, and other restraints on competition, including pricing agreements, agreements not to compete, and intimidation of potential competitors.
- Conflicts of interest.

**3. Unfair, Deceptive, and Fraudulent Practices (White Collar Crime).** A considerable portion of the agency's resources is allocated to counter unfair, deceptive, and fraudulent practices that may properly be described as "white collar crime." These include:

- Conspiracies: Two or more parties agreeing to a fraudulent arrangement.
- Diversion of packer and poultry trusts: A willful diversion of assets that are legally required to be held in trust to assure payment to cash sellers of livestock and live poultry.
- False weighing of livestock, meat, and poultry and use of inaccurate scales.
- Weight or price manipulations: Practices used to either fraudulently increase a person's profits, or to gain an unfair advantage over competitors.
- Misuse of custodial (trust) accounts by auction markets and commission firms.
- Commercial bribery: Any secret payment or valuable gift given or offered to obtain favored treatment.
- Extortion: Any purchase or sale made under duress or threat.
- Bankruptcy fraud: Preferential payments, planned bankruptcies, or "bust-out schemes."
- Bait and switch advertising: Customers are "baited" by advertisements, and then "switched" to other products.
- Check kiting: "Kiting" or "swapping" checks by placing them in two or more bank accounts for the purpose of creating a false "float" or inflated balance.
- Unfair business-getting tactics such as free trucking and commission rebates.
- Commission firms and auction markets defrauding consignors.
- Misrepresentation of quality, quantity, or origin.
- False accounting and recordkeeping.
- Illegal brokerage used as part of a payoff scheme.

### Responsibilities of Sellers

Livestock sellers have specific responsibilities to be eligible for protection under P&SP payment protection provisions. They are responsible for the following:

**Bonds** – The seller must file a written claim with P&SP within 60 days of the transaction in which he or she failed to receive payment.

**Packer and Poultry Trusts** – Packer and poultry trusts relate to the sale of livestock to a meat packer and the sale, or delivery of live poultry under a growing arrangement, to a live poultry dealer. To preserve rights under the packer and poultry trust, the seller must:

- Be a cash seller or poultry grower. The seller loses his or her rights to protection under the statutory trust if he or she extends credit. The law does not allow extension of credit on poultry produced under a growing arrangement.
- File a written notice with both P&SP and the meat packer or live poultry dealer within 30 calendar days from the date payment is due as required by the P&S Act.
- File a written notice with both P&SP and the packer or live poultry dealer within 15 business days after the seller has received notice that the packer's or live poultry dealer's payment instrument is being returned unpaid.

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**Reparations** – Injured parties must file a claim with P&SP in writing within 90 days of the transaction date, or in the case of fraud, within 90 days of the date of discovery.

### **Penalties for Violation –**

- Cease and desist orders.
- Suspension of business operations.
- Civil penalties up to a maximum of \$27,000 per violation for poultry payment and trust infractions and up to a maximum of \$11,000 per violation of all other infractions of the P&S Act.
- Permanent injunctions, fines, and jail sentences for actions taken through the Justice Department.

### **Enforcement Procedures –**

- Letters of Notice – Certified formal letters, give notice of the violations found. Violations are corrected, when practical, without resorting to formal legal proceedings.
- Administrative actions - These actions are within USDA. A complaint, alleging specific violations, is filed against a firm or individual. The accused party has a right to a hearing before an administrative law judge. The judge's decision may be appealed to the USDA Judicial Officer. The accused party may appeal the Judicial Officer's ruling to a U.S. Appeals Court, and further to the Supreme Court of the United States.
- Court actions - Legal action against those subject to the P&S Act may be taken through the Justice Department in a U.S. district court.

**Reparations** – Persons who feel they have been financially harmed may file claims for reparations against stockyards operators, commission firms, auction markets, dealers, and order buyers. There are no reparation provisions against packers and live poultry dealers under the P&S Act.